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9 **UNITED STATES DISTRICT COURT**  
10 **SOUTHERN DISTRICT OF CALIFORNIA**  
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12 SSFT PROPERTIES II LLC,

13 Plaintiff,

14 vs.

14 DAVID BACKE; DOES 1-10 inclusive,

15 Defendants.

CASE NO. 12cv3 WQH (NLS)

ORDER

16 HAYES, Judge:

17 The matter before the Court is the Ex Parte Motion to Remand filed by Plaintiff SSFT  
18 Properties II LLC. (ECF No. 3).

19 **I. Background**

20 On September 19, 2011, Plaintiff initiated this action by filing a Complaint for unlawful  
21 detainer in the Superior Court of California for the County of San Diego, where it was assigned  
22 case number 37-2011-00031565-CL-UD-SC. (ECF No. 1-1 at 3). The Complaint alleges that  
23 Plaintiff is entitled to possession of real property located at 495 Allview Court, Chula Vista,  
24 California. *Id.* at 3-4. The Complaint alleges that Plaintiff served Defendants with written  
25 notice requiring them to vacate the property and Defendants failed to vacate the property. *Id.*  
26 at 4. The Complaint alleges a single claim for unlawful detainer under California law, seeking  
27 possession of the property and damages in the sum of \$70.00 per day from September 16, 2011  
28 until Defendants vacate the premises. *Id.* at 6.

1 On January 3, 2012, Defendant David Backe, proceeding *pro se*, removed the action  
 2 to this Court. (ECF No. 1). The Notice of Removal alleges that federal question jurisdiction  
 3 exists because “the Notice to Occupants to Vacate Premises failed to comply with The  
 4 Protecting Tenants at Foreclosure Act 12 U.S.C. § 5220.” *Id.* at 2. Defendant contends that  
 5 “[f]ederal question jurisdiction exists because Defendant’s answer, a pleading, depend[s] on  
 6 the determination of Defendant’s rights and Plaintiff’s duties under federal law.” *Id.* at 3.

7 On January 6, 2012, Plaintiff filed an Ex Parte Motion to Remand. (ECF No. 3).  
 8 Plaintiff alleges that federal question jurisdiction does not exist because there is no federal claim  
 9 in the Complaint.

## 10 **II. Discussion**

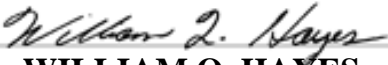
11 A defendant may remove a civil action from state court to federal court based on either  
 12 federal question or diversity jurisdiction. *See* 28 U.S.C. § 1441. “The presence or absence of  
 13 federal-question jurisdiction is governed by the well-pleaded complaint rule, which provides  
 14 that federal jurisdiction exists only when a federal question is presented on the face of the  
 15 plaintiff’s properly pleaded complaint.... [T]he existence of a defense based upon federal law  
 16 is insufficient to support jurisdiction.” *Wayne v. DHL Worldwide Express*, 294 F.3d 1179,  
 17 1183 (9th Cir. 2002) (quotation and citation omitted). “The removal statute is strictly  
 18 construed, and any doubt about the right of removal requires resolution in favor of remand.”  
 19 *Moore-Thomas v. Alaska Airline, Inc.*, 553 F.3d 1241, 1244 (9th Cir. 2009) (citation omitted).  
 20 The presumption against removal means that “the defendant always has the burden of  
 21 establishing that removal is proper.” *Id.* A district court must remand a case to state court “if  
 22 at any time before the final judgment it appears that the district court lacks subject matter  
 23 jurisdiction.” 28 U.S.C. § 1447(c).

24 The sole basis for federal jurisdiction referenced in the Notice of Removal is that  
 25 Defendant has a defense to the Complaint based upon Plaintiff’s alleged failure to comply with  
 26 a federal statute. “[T]he existence of a defense based upon federal law is insufficient to  
 27 support [federal question] jurisdiction.” *Wayne*, 294 F.3d at 1183. This Court does not have  
 28 federal subject-matter jurisdiction over this matter.

1 **III. Conclusion**

2 IT IS HEREBY ORDERED that the Ex Parte Motion to Remand filed by Plaintiff SSFT  
3 Properties II LLC (ECF No. 3) is GRANTED. Pursuant to 28 U.S.C. § 1447(c), this action is  
4 REMANDED for lack of subject-matter jurisdiction to the Superior Court of California for the  
5 County of San Diego, where it was originally filed and assigned case number 37-2011-  
6 00031565-CL-UD-SC.

7 DATED: January 23, 2012

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9 **WILLIAM Q. HAYES**  
United States District Judge